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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,496	03/28/2002	Ake Lignell	LIGN3005/REF	4529
23364	7590	12/29/2003	EXAMINER	
BACON & THOMAS, PLLC 625 SLATERS LANE FOURTH FLOOR ALEXANDRIA, VA 22314			COE, SUSAN D	
			ART UNIT	PAPER NUMBER
			1654	

DATE MAILED: 12/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/088,496	LIGNELL ET AL.	
	Examiner	Art Unit	
	Susan Coe	1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-25 is/are pending in the application.
- 4a) Of the above claim(s) 18-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The amendment filed September 30, 2003, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 9-25 are pending.

Election/Restrictions

3. In Paper No. 7, applicant elected with traverse Group I, claims 9-17 and Crohn's disease for species A. Applicant's response regarding the rejection of this species has been found persuasive. Therefore, using xanthophylls to regulate Th1 and Th2 cell mediated immune responses in a patient with Crohn's disease is considered to be allowable over the prior art.

Regarding this situation, MPEP section 803.02 states:

The prior art search will be extended to the extent necessary to determine patentability of the Markush-type claim. In the event prior art is found during the reexamination that anticipates or renders obvious the amended Markush-type claim, the claim will be rejected and the action made final. Amendments submitted after the final rejection further restricting the scope of the claim may be denied entry.

Accordingly, an additional species is selected for examination. Psoriasis vulgaris is selected as this species.

4. This application contains claims 18-25 drawn to an invention nonelected with traverse in Paper No. 7. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.
5. Claims 9-17 are examined on the merits.

Claim Rejections - 35 USC § 102

6. Claims 9-12 rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 5,811,446.

US '446 teaches a method of treating ocular inflammation caused by psoriasis (see claim 8). The composition used in this method of treatment contains astaxanthin (see claim 28, line 31). Thus, US '446 teaches administering astaxanthin to a patient that has psoriasis. US '446 does not specifically teach that their claimed method of treatment with astaxanthin has the same effects on T cells as those claimed by applicant. However, these effects would have to be inherent in the method taught by US '446 because the reference teaches administering the same composition to the same patient as applicant. Therefore, if the method taught by the reference does not have these effects then applicant's invention would not function as claimed.

Claim Rejections - 35 USC § 103

7. Claims 9 and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,811,446 in view of US Pat. No. 5,744,502.

As stated above, US '446 is considered to inherently teach the claimed method of treatment; however, the reference does not specifically teach using astaxanthin from *Haematococcus* or that the astaxanthin is esterified with fatty acids.

US '502 teaches that astaxanthin derived from *Haematococcus* is esterified with fatty acids. US '502 teaches that this form of astaxanthin is preferable to other forms of astaxanthin because it is more efficiently absorbed by the patient and is more stable (see column 2, lines 41-54). Based on this disclosure, a person of ordinary skill in the art would understand the benefits

of using the astaxanthin taught by US '502 in the method of treatment taught by US '446. Therefore, an artisan of ordinary skill would have been motivated to use astaxanthin esterified with fatty acids derived from *Haematococcus* in the method of treatment taught by US '446.

8. No claims are allowed. However, allowable subjected matter is indicated in paragraph 3.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Susan Coe, Examiner
December 15, 2003



FRANCISCO PRATS
PRIMARY EXAMINER